

Review sheet for the final exam.

I'll do this review sheet by considering each of the articles that you'll be responsible for on the final. Remember the review sheet is not meant to be an exhaustive review of each articles, but of the principal points especially for the essay questions. Since this an open book, all material in the articles is fair game with due regard to questions that aren't ridiculously picky on matters of factual detail. The exam will be exactly the same format as the mid-term exam although the types of questions on the final might vary slightly from the mid-term.

A) *Whitely, Diana. this is a short piece. I'll leave studying it up to you.*

B) *Brandt, Retributive Justice, section 2 on utilitarian theory of criminal justice (489-497)*

Note: Brandt makes a distinction between an extended rule utilitarian theory that he developed and regular rule utilitarian theory. Don't worry about that distinction for the exam. simply take what he says about extended rule utilitarian theory to apply to regular rule utilitarian theory.

With regard to this article you should be able to discuss:

the relation between utilitarian theory generally and any views about criminal justice (whether crime should be punished; what would be the nature of an idea system of criminal justice, etc.)

Brandt's presentation of Bentham's theory of punishment: its nature, goals and justification as well as the sorts of factors that provide legitimate excuse from punishment.

Brandt's discussion of the objection as to whether utilitarian are committed to a view of strict liability for criminal offenses (that is, whether there is any moral basis for excusing criminals under certain conditions for being punished). you should be familiar with the objections and Brandt's counter arguments.

Brandt's discussion of the difference between imprisonment and quarantine? Why does B. think that this objection is important? How does the utilitarian meet it?

C) *Moore, The Moral Worth of Retribution*

This is fairly straightforward (you are only responsible for Moore up to page 188).

You should be able to set forth Moore positive account of a retributivist theory of punishment and why he thinks that there is a moral duty to punish individuals, You should also be able to state the seven theories that from Moore's point of view are at times confused with retribution as well as why he thinks that retribution should not be identified with any of these theories.

What thought example does Moore construct to show that our "intuition" that wrongdoers should be punished is grounded in a notion of retributive justice rather than deterrence or rehabilitation.

Moore discusses several objections to retributivism (pages 185-188). You should be familiar with the first four – what the objection is and how Moore tries to meet it.

D) *Wasserstrom, The rehabilitation model* You should be able to discuss:

1) You should be familiar with the argument for this model as developed by Karl Menninger - why is a program of treatment of criminal always to be preferred to a program of punishing them?

What specific objections does W have with Menninger's proposal:

1) the argument for the sickness of criminals as the basis for treatment rather than punishment.

2) the argument for compulsive behavior of criminals as the basis for treatment rather than punishment.

3) W's rejection of the claim that no criminals should be punished because of some mental or physical disease that eliminates the responsibility of the criminal for the crime.

4) Lady Wooten's view that argues for treatment rather than punishment independently of whether criminals are responsible for their crimes. What exactly is her argument? Why does her proposal entail that there is no point to distinguish between wickedness and disease in terms of how we deal with criminals? Why does W reject LW's views?

E) *Freedman, Lawyer's Ethics in an Adversary System*

Look at review questions 1-4 on page 247 of Freedman's article.

F) *Ernest van den Haag, In Defense of the Death Penalty*

In light of his conception of the priority of justice, van den Haag defends the death penalty even if some who are guilty escape punishment, or some who are innocent are executed, or if the system of criminal justice is capricious in its application of the death penalty. What is the argument?

What evidence does EH provide to show that the death penalty is useful for deterrence?

What proportional argument for the death penalty does EH give?

Why does EH argue that abolishing the death penalty provides certatim criminals with immunity from punishment for murder?

EH considers several objections to the dp? the DP is legalized murder, most murder arise from acts of passion that cannot be deterred through the dp, and the dp gratifies the desire for revenge. What are the objections and how the EH meet them?

EH argues that even if not useful, the dp would still be just. What's the argument?

G) *Bedau, Capital Punishment*

1) B considers the analogy of capital punishment to self defense. What two principles does B argue govern the use of lethal force in self-defense?

2) What is the distinction between the dp as crime prevention and a deterrent to crime.

To what extent does B think that the dp acts as a crime preventative? To what extent does he think that it acts to deter crime in comparison with imprisonment? Make sure to study the various arguments he uses in these matters.

3) B argues that a utilitarian justification of the dp must provide a cost benefit analysis. what factors must be taken into account in this analysis? Some argue that the death penalty is justified if it prevents the murder of innocent people. Does B agree with this argument. Does he think that it can be answered?

4) B rejects the idea that the lax talionis can be applied literally. Why?

5) B thinks that the actual reasons why people are sentenced to death are show that they are "losers in an arbitrary lottery that could just as well as spared them as killed them." Why does he argue this.

EH and B contradict each other on a number of points, so you should be able to compare and contrast their positions.

H) *David Dow, The Problem of Innocence*

1) Make certain to understand the sense of guilt and innocence as these terms are used in a legal sense. Also be clear on the distinction between the guilt phase of a trial and the penalty phase of a trial. Dow claims that "we can rarely if ever state with metaphysical certainty that a particular person did not commit a crime." What does he mean and what justification does he provide.

2) Dow thinks that current debate about the dp that focuses on the execution of innocent people obscures crucial questions regarding the morality of the dp. What is his argument? What sorts of cases does he mention.

I) *Bud Welch, Speaking out Against the Execution of Timothy McVeigh*

This is a relatively short piece that I'll leave to you.

For EH, it matters not whether innocent individuals may be executed nor whether there is an element of capriciousness in the judicial system regarding the imposition of the dp, since any justice served is better than no justice served. Bedau disagrees sharply with this position. Does the evidence that Wiseman presents in the first part of the article help to support the view points of either of these individuals? In section D, Wiseman notes supreme court rulings which view retribution as an unsuitable basis for the dp. Does this refer to the moral theory of retribution that we have discussed.